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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

\* Certified in Administrative Law  
Board of Legal Specialization

June 24, 1998

Magalie R. Salas  
Secretary  
Federal Communications Commission  
1919 M. Street  
Washington, D.C. N.W. 20554

VIA FACSIMILE TRANSMISSION  
(202) 418-2813

Re: Docket No. CC-98-91, SBC Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act and 47 U.S.C. Section 160 for ADSL Infrastructure and Service

Dear Ms. Salas:

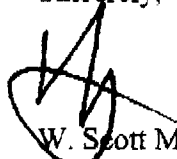
Enclosed for filing please find an original and four (4) copies of Comments of McCollough and Associates, P.C. on Petition for Relief in the above docket.

I am sending you via overnight mail an original signed copy of the Comments by overnight mail today.

Please file mark the additional copy.

Please call me if you have any questions. Thank you for your assistance in this matter.

Sincerely,



W. Scott McCollough  
Attorney at Law

cc: All parties of record

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JUN 24 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**In the Matter of**

**Southwestern Bell Telephone Company, Pacific Bell  
and Nevada Bell Petition for Relief  
from Regulation Pursuant to Section 706 of the  
Telecommunications Act of 1996 and  
47 U.S.C. for ADSL Infrastructure and Service**

**CC DOCKET NO. 98-91**

**COMMENTS OF MCCOLLOUGH AND ASSOCIATES, P.C.  
ON PETITION FOR RELIEF**

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**June 23, 1998**

## SUMMARY

McCollough and Associates, P.C. is a law firm in Austin, Texas. The firm represents CLECs, Internet Service Providers and other technology, and communications-related clients. As a result, the firm needs access to advanced means of connecting to data networks, including the Internet. McCollough and Associates, P.C. at present uses a variety of methods to do so, including ISDN and dedicated lines. These Comments are submitted on behalf of the firm, as an existing user and business that is interested in securing reasonable access to advanced technology and services.

The Petition submitted by the SBC family seeks relief under FTA96 § 706 and 47 U.S.C. § 160. Specifically, Petitioners request that the FCC exempt the SBC companies from

- Any unbundling obligations applicable to ADSL facilities;
- Any obligation to provide a wholesale discount on ADSL services
- Dominant treatment of ADSL service; and
- Any MFN obligation as applicable to "inconsistent agreements" as specified in the Petition.

Petition, pp. 5-6.

The requested relief should be denied at this time. In the alternative, the Commission should at least condition any relief on

- Execution, state approval and implementation of Interconnection Agreements with CLECs that provide access to ADSL-capable loops on reasonable terms;
- Requiring the SBC companies to make ADSL end-user access to ISPs available on terms other than ISP use of the SBC ATM tariff, and
- Allowing ISPs to in some fashion package their data service with access to and use of ADSL-capable loops in combination with provision of voice service by the SBC company.

Further, the Commission should not rule that use of a loop to access a data service using ADSL technology is inherently or predominately interstate. The Commission should not effectively pre-empt the states from exercising regulatory authority over these loops or the services provided over them. Both the FCC and the states have jurisdiction, and each should be allowed to exercise their authority.

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**COMMENTS OF MCCOLLOUGH AND ASSOCIATES, P.C.  
ON PETITION FOR RELIEF**

McCollough and Associates, P.C. submits these Comments on the Petition for Relief submitted by the SBC family. The Commission should deny relief or at least condition any relief as explained below. Further, the Commission should not preclude the States from exercising their regulatory authority over services that are not interstate.

We will demonstrate below that Petitioners have not made ADSL-capable loops available to competitors on reasonable terms; that, at least in Texas, SBC faces little or no "ADSL" competition - by CLECs or ISPs, and has acted in various ways to preclude such competition. As far as we can determine, there is not even one existing interconnection agreement in Texas that specifically address ADSL-capable loops, so there are no "inconsistent" agreements requiring "grand fathering." Further, SBC's experimental and forthcoming retail offering precludes meaningful participation by ISPs. It is too soon to grant any of the requested relief.

## **I. SBC HAS LITTLE OR NO MEANINGFUL COMPETITION FOR "ADSL SERVICES" IN TEXAS**

SBC Petition asserts that there is widespread and healthy competition for ADSL services in its entire territory. While there may be some competition in California, there is little or no competition in Texas. The reason is that SBC has refused to make ADSL-capable loops available to CLECs on reasonable terms and has refused to allow ISPs to order circuits that could be used to provide ADSL. Granting relief now would ensure that there will be only one significant ADSL service provider in Texas – SBC – if and when the Company actually offers the service on a retail basis.

SBC could find only one alleged provider of ADSL in Texas, and that company does not, in fact, provide ADSL service. A careful reading of SBC's Petition shows that the Petitioners could only point to one alleged provider of ADSL. At page 17, SBC claims that "Netspeed has been offering ADSL service in Austin, Texas since January 1997." This is not correct. Netspeed (recently acquired by Cisco) is an equipment provider and does not provide any services to end users. See, Exhibit 1. Exhibit 2 is a print out of a web page from the ADSL forum. It indicates that GTE will offer ADSL service in Irving and Dallas; that SBC is conducting a trial in Austin and Houston<sup>1</sup>; and a company called Signet Partners allegedly provides ADSL service in Austin, Houston and San Antonio. Signet Partners, however, was acquired by Verio, a national ISP.<sup>2</sup> Finally, the Valley Telephone Cooperative in the Rio Grande Valley area west and south of San

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<sup>1</sup> A copy of SWBT's Texas intrastate experimental tariff for ADSL is attached as Exhibit 3.

<sup>2</sup> Verio's web site reveals that ADSL services are offered in California, but there is no mention of Texas. See, Exhibit 4.

Antonio, Texas, appears to be deploying ADSL in its service territory. This is not meaningful competition.

The question is, therefore, why ADSL is not available in Texas to a significant number of users. And the answer is that SBC has taken action to squelch that competition. It will not let CLECs deploy ADSL, except over very expensive 4-wire digital unbundled loops. SBC has no distinct retail offering subscribers can use to get to an ISP (or that an ISP can order on behalf of a user). Finally, SBC has refused to make "dry" copper pair available to either CLECs or ISPs.

SBC "commits" to providing ADSL-capable unbundled loops to CLECs. Note the future tense. At present, there does not appear to be a single approved interconnection agreement in Texas that explicitly provides for this type of unbundled loop. Indeed, SBC *prohibits* CLECs from using 2-wire loops to deliver ADSL. See, Exhibit 5, Transcript page 790-791.<sup>3</sup> A CLEC that wishes to provide ADSL must purchase a 4-wire digital loop from SWBT, at a cost of \$105 per month. Exhibit 4, Tr. Pp. 813-815.<sup>4</sup>

SBC has succeeded in preventing deployment of ADSL by competitors; as a result there is no meaningful competition in Texas for this service. No relief should be granted until SBC demonstrates it has made ADSL-capable unbundled loops available to competitors on reasonable terms.

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<sup>3</sup> Exhibit 5 is composed of excerpts from SBC's Texas § 271 proceeding. We have located all the transcript pages where ADSL is discussed.

<sup>4</sup> A CLEC that wants to offer ADSL, or even simple 56kbps service, may end up with a 4-wire DSL that is provisioned using HDSL. Exhibit 5, Transcript pages 814, 817. This is a ridiculous, expensive and wasteful approach since the CLEC merely needs a copper loop without loading coils, bridge taps or pair gain systems. Petition, pp. 9-10. SBC has refused to create a UNE that can be used to provide these services. See, Exhibit 6.

ISPs desiring to provide ADSL service cannot do so, at least with SBC's knowledge. Since ISPs cannot provide local telephone service without certification, they do not actually carry circuit-switched voice calls. The most prevalent manner of provision at this time is through SWBT's intrastate private line tariff offering designed for burglar alarm circuits. Anecdotal stories by several ISPs on Internet discussion lists and Usenet indicate that SBC is beginning to refuse to provide these circuits (or any other type of circuit out of intrastate or interstate tariffs) to ISPs. We have also heard of situations where SBC would not remove loading coils, bridge taps or pair gain devices at the request of an ISP desiring to use the burglar alarm circuit for ADSL.

It is essential that CLECs and ISPs have access to basic loops that are ADSL-capable. SBC has adamantly refused to make them available. The SBC companies cannot be deregulated in this service market until there is an established means for both CLECs and ISPs to use SBC's copper plant, on a wholesale and retail basis, to provide ADSL services.

## **II. SBC MUST HAVE AN UNBUNDLED RETAIL OFFERING THAT IS SUBJECT TO RESALE**

SBC has only an experimental offering for ADSL service in Texas. The tariff is attached as Exhibit 3. As can be seen, in order to make high-speed Internet access available, an ISP must subscribe to SBC's ATM tariffs. *See also*, Petition, pp. 7, 21. In other words, an ISP cannot get access to a subscriber's ADSL loop at the DSLAM, allow the voice traffic to flow through the PSTN and take the data traffic over its own network. SBC "bundles" access to the ADSL loop with its ATM offering. This approach is consistent with PacBell's California offerings, and GTE's proposed tariff.

ISPs should not have to buy SBC's fast packet service to get access to the ADSL loop. The Commission must allow ISPs to collocate their equipment (DSLAM) at SBC end offices and take the data traffic over their own networks. Alternatively, the Commission should at least allow ISPs to connect to SBC's DSLAM in each CO.<sup>5</sup>

We oppose any relaxation of the duty to make these services available for resale. Until there is actual competition through alternative land line facilities and/or UNEs, SBC will be the only game in town.<sup>6</sup>

### III. ADSL IS NOT INHERENTLY INTERSTATE

The Commission should reject SBC's attempt to pre-empt the states from exercising regulatory authority over these loops or the services provided over them. Both the FCC and the states have jurisdiction, and each should be allowed to exercise their authority.

SBC states that "(i)nasmuch as Internet traffic is predominately interstate in nature, the SBC LECs will file interstate tariffs to offer ADSL services." Petition, p. 22. SBC's statement concerning the "jurisdictional nature" of Internet traffic is unsupported and factually and legally incorrect.

The ADSL loop itself is typically a regular subscriber line - a common line - that will be used for basic voice service (local, intrastate toll and interstate toll) along with data. The costs of

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<sup>5</sup> We believe both options should be available. ISPs should be able to use their own equipment, and not be tied to Alcatel equipment, which is SBC's supplier. Petition, p. 6, note 5. The Commission is studying ESP interconnection and UNE rights in the *Computer III* remand, and should decide these issues before it grants any relief to SBC in this case.

<sup>6</sup> The existence of alternative means of high-speed access through cable and satellite does not justify the relief sought. These services have not been deployed on a wide-spread basis or are prohibitively expensive.



this loop are assigned to both the state and interstate jurisdictions under separations. "Data" usage over this line will be both interstate and intrastate. While there may be circumstances where data over a ADSL loop will be predominately or solely for interstate traffic, there will also be times when the ADSL loop is used for purely intrastate traffic, such as when the loop is connected to a private LAN.<sup>7</sup>

The fact that some data traffic over ADSL loops will ultimately go over the Internet does not render ADSL service exclusively interstate. In the first place, most of the time the circuit will not be sending or receiving any traffic, and when there is traffic, a significant portion will remain within the state. One of the SBC companies told the Texas PUC that 99% of user traffic going to the SBC Internet subsidiary would be jurisdictionally intrastate. *See*, Exhibit 7. Second, this Commission has ruled that the telecommunications services used to access the Internet are segregable from the enhanced (Internet access) services provided using the telecommunications service. *In Re Federal-State Joint Board on Universal Service*, 12 F.C.C.R. 8776 ¶¶ 64, 73, 83 (*Rel. May 8, 1997*). Even if the Internet is deemed to be an interstate network, that does not dictate that ADSL loops and services must be provided only out of a federal tariff.

While a federal tariff may be appropriate, the Commission should be careful to not directly or indirectly pre-empt the states from exercising their legitimate jurisdiction over intrastate communications. The FCC need not make any jurisdictional findings to dispose of the Petition.

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<sup>7</sup> SBC acknowledges that an ADSL loop can connect to networks other than the Internet. Petition, p. 9. *See also*, Exhibit 3, p. 5.

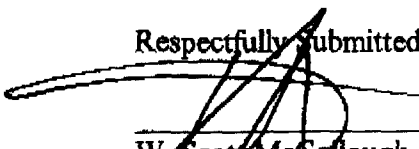
### CONCLUSION

SBC should not be granted any of the relief it seeks, at least until there is actual, sustainable competition for ADSL service using land-line facilities. ISPs and CLECs must be allowed to provide services using SBC's plant, on both a retail and unbundled basis, and resale must be allowed. Any retail offering must be sufficiently unbundled to allow an ISP to not use SBC's ATM network in order to access an SBC-provided ADSL. ISPs should be allowed to collocate their equipment at end offices so they are not required to use the equipment provided by SBC's chosen vendor.

The way to get advanced services deployed is to enforce FTA96, and ensure that ISPs and CLECs have access to ADSL-capable loops at the wholesale and retail levels. Freeing SBC as requested in the Petition will retard, not advance, general ADSL availability.

The Petition should be denied. Alternatively, any relief should be conditioned on fulfillment of the terms discussed above.

Respectfully Submitted,



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### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Comments was served on all parties of record by U.S. Mail, postage prepaid.



W. Scott McCollough